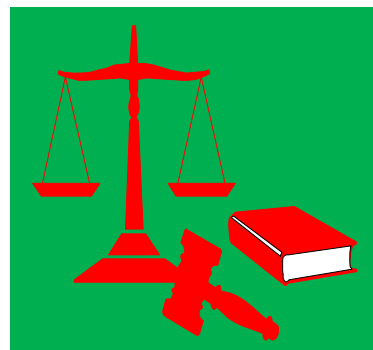


# NASA Langley Office of Chief Counsel Holiday Newsletter



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December 2011

Here we are at the end of the year and preparing to celebrate this holiday season. This time of year means gift giving, parties, celebrations, and expressions of good will. To top off the end of the year, we thought we'd pass on some guidance for you regarding exchanging and accepting gifts in the workplace and attending holiday parties. We've thrown in a couple of bonus articles: one on misuse of office resources and one related to privacy and medical records or information.

We also couldn't pass on extending legal kudos to Gabriel Barnes. Gabriel, a local teenager who lives in Virginia Beach, purchased a lunar rock and a meteorite encased in protective glass for \$8.00 each at a local flea market. Turns out the rocks were genuine, and Gabriel turned them in to Langley Security.

Whether you celebrate Christmas, Hanukkah, Kwanza, or another holiday, the LaRC Office of Chief Counsel wishes you a happy one. In the spirit of the season, we're skipping the lawyer jokes. Enjoy,

Mike Madrid,  
LaRC Chief Counsel

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# Your Workplace Gift Giving and Party Guide



**The holiday season is traditionally a time of parties, receptions, and exchanging gifts. However, even at the Holiday Season, the Standards of Conduct apply. To ensure you don't unwittingly violate the standards, a brief summary of the applicable rules is set out below. If you have any questions, please contact one of our ethics counselors, Ken Goetzke or Pete Polen.**

(NOTE: Thanks to the Department of Defense Standards of Conduct Office and ethics counselors throughout the Federal government for the original version of this guidance. Revised December 2011, NASA LaRC, Office of Chief Counsel. )

## **General Gift Rule:**

Federal employees must not accept gifts offered because of their official positions or offered by a "prohibited source," unless an exception applies.

A prohibited source is anyone who:

- Seeks official action by their Federal agency;
- Does business or seeks to do business with their Federal agency;
- Has interests that may be substantially affected by the employee's performance of duty; or
- Is an organization composed of members described above.

**Lobbyist Gift Ban:** In addition to the above rule, full-time civilian political appointees may not accept

gifts from registered lobbyists or lobbying organizations. For purposes of the lobbyist gift ban, "gifts" are most items of value; examples are free attendance at dinners and other meals, receptions, sporting events, and similar widely attended gatherings. Political appointee includes all full-time non-career Presidential appointees, non-career Senior Executive Service (SES) appointees, and non-career appointees excepted from the competitive service by reason of being of a confidential or policymaking character (e.g., Schedule C, politically appointed term SES or equivalent).

## **Gifts from Prohibited Source including**

**Federal Contractors:** Federal employees may not accept gifts from contractors and contractor personnel, including attendance at parties, open houses, and receptions, unless one of the following exceptions or exclusions applies:

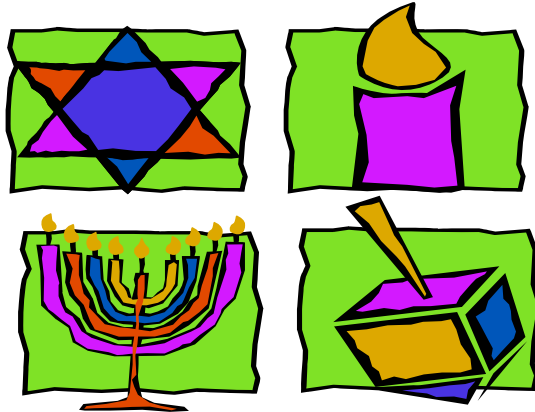
1. **De minimus Gift:** Federal employees may accept gifts (other than cash) not exceeding \$20, as long as the total amount of gifts that the employee accepts from that source does not exceed \$50 for the year.
2. **Personal Gift:** Federal employees may accept gifts, even from a contractor employee, that are based on a bona fide personal relationship. (Such personal gifts are actually paid for by the contractor employee rather than the contractor.)
3. **Widely-Attended Gathering:** Federal employees may generally attend an open-house or reception, and accept any gift of refreshments if it is a widely-attended gathering, and the employee's ethics counselor (or other agency designee) determines (usually in writing) that it is in the agency's interest that the employee attend.



spouse as an employee, and not to the Federal employee because of his or her position.

**Gifts between Federal Employees:** Federal employees may accept gifts, including attendance at parties, open-houses, and receptions, from other Federal personnel, if one of the following applies:

1. Invitation from a subordinate (who makes less): Federal employees may accept personal hospitality at the residence of a subordinate that is customarily provided on the occasion.
2. Invitations from a supervisor or a co-worker: No restrictions. Enjoy!



4. **Open to the Public:** Federal employees may accept invitations (even from contractors) that are open to the public, all Government employees, or to a group defined in a manner that does not discriminate among Federal employees based on position or pay.
5. **Gifts unrelated to Federal employment:** Federal employees may accept invitations offered to a group or class that is not related to Government employment (For example, if the building owner where your office is located throws a reception for all of the tenants of the building).
6. **Modest Items of Food and Refreshments:** Federal employees may accept food items consisting of soft drinks, coffee, pastries, or similar refreshments not constituting a meal since they are not considered to be a gift.
7. **Gifts based on Outside Business or employment relationships:** Federal employees may accept attendance at events that are solely based on outside business or other employment relationships. For example, a Federal employee's spouse works for a Federal contractor. The Federal employee may accompany the spouse to the contractor's holiday party since the invitation is to the

## GIFTS AND GIFT EXCHANGES

### Gifts and Gift Exchanges That Include Contractor Personnel:

1. Gifts from contractors, even during the holidays, may not exceed \$20.
2. Gifts to contractors: Check with the contractor about their restrictions on gift acceptance.

**Between Federal Personnel:** Supervisors may not accept gifts from subordinates or Federal employees who receive less pay, unless one of the following exceptions applies:

1. During holidays, which occur on an occasional basis, supervisors may accept gifts (other than cash) of \$10 or less from a subordinate.
2. Supervisors may accept food and refreshments shared in the office and may share in the expenses of an office party.
3. If a subordinate is invited to a social event at the supervisor's residence, the subordinate may give the supervisor a hospitality gift of the type and value customarily given on such an occasion.

Please note, there are no legal restrictions on gifts given to peers or subordinates, however, common sense (and good taste) should apply.

## OTHER IMPORTANT INFORMATION:

1. **Soliciting:** You may not solicit outside sources for contributions to a government agency-related party. This includes funds, food, and other items.
2. **Use of appropriated funds:** Generally office parties are unofficial events, and you may not use appropriated funds to pay for them.
3. **Door prizes and drawings:** Beware that door prizes or drawings could involve gambling, which would require compliance with state statutes and Federal regulations. With narrow exceptions, Federal regulations prohibit gambling on Federal property or while in a duty status. GSA regulations ban gambling in GSA owned or controlled buildings.
4. **Greeting cards:** You may not use appropriated funds to purchase and send greeting cards.
5. **Government vehicle:** As a general rule, participation at holiday social events is personal, not official, and therefore use of government vehicles to/from such events is not be authorized. However, there may be very limited circumstances in which a senior official or officer is invited to attend because of his official position and where he will be performing official functions at the event as opposed to being invited because he or she is an important person. In these situations, use of a government vehicle may be authorized, subject to normal "home-to-work" transportation restrictions. Note, however, that it would be difficult, if not impossible, to justify the use of a government vehicle when a function involves one's immediate staff/office or events comprised of personal friends. All requests for use of a government vehicle to attend holiday social events should be reviewed on a case-by-case basis.

## RULES APPLICABLE TO CONTRACTOR EMPLOYEES:

Many contractors have rules of ethics or business practices that are similar to the Federal rules.

Take these rules into consideration before offering

contractor employees gifts or opportunities that they may not be able to accept.



### Examples:

1. **Office Party (non-duty time):** Your office is having a holiday party during the non-duty lunch hour or after work and asks each person attending to pay \$5 to cover refreshments and to bring a pot luck dish or dessert. Contractor employees may attend, pay \$5, and bring food because these contributions are not considered to be gifts, but a fair share contribution to the refreshments. Remember, contributions must be voluntary, so soliciting must be done with care to ensure there is no pressure. Also, ensure this is non-duty time for the contractor employees as well.
2. **Office Party (duty time):** What about a party that cuts into duty hours? The Government usually may not reimburse a contractor for its employees' morale and welfare expenses. The contractor has to decide whether to let its employees attend and forego payment for their time, or insist that they continue to work. If contractor employees are allowed to attend, the contractor must also decide whether it would pay its employees for that time, even though the Government would not reimburse it. The contractor does not have to pay its employees for that time. Consult the contracting officer and ethics counselor before inviting contractor employees to a function during their duty hours.
3. **Gift to Supervisor:** Your office wants to give the office supervisor a gift. However, you can't solicit other employees for contributions to a group gift. (Group gifts are permitted only for special, infrequent events such as retirements.) As for contractor employees, you can't ask them to contribute anything, as it is considered soliciting a gift from a prohibited source. Even if contractor employees volunteer to contribute cash, it may not be accepted because the \$20 exception does not apply to cash.

4. **Exchange of Gifts:** Your office, including the contractor employees, wants to exchange gifts at the party. Because it is difficult to have truly anonymous gift exchanges, you will want to restrict the value of such “random or exchanged” gifts to the authorized \$10.00 or less if personnel receiving different pay levels are involved. Gift exchanges in which employees purchase gifts for other employees whose names they drew at random are more troublesome. Where contractor personnel are involved, a \$20 per contractor company limit applies. Where an employee may buy a gift for a superior, the \$10 limit is prudent. Some organizations consider such a gift exchange to be exchanges of items of equivalent value, and that everyone participating is paying market value for the items, so no one is receiving a gift. Only in that case would the suggested monetary limits not apply. The best practice is to limit gifts to \$10 or less when involving more than a very small group of equivalently paid co-workers.

5. **Private Parties (Federal Personnel):** One of your Government co-workers is having a party at his house and has invited office personnel, including the contractor employees. A gift of food and refreshments to a contractor employee does not violate Government ethics rules. The contractor employees may want to check with their contractor’s rules before accepting (since many contractors have similar ethics rules). If the contractor employee brings a hospitality gift, it may not exceed \$20. If such a gift is edible, even if it exceeds \$20, the host may accept it on behalf of all the guests and share it with them.

6. **Private Parties (Contractor Employee):** If a contractor employee is having a personal party and invites Government personnel, normally Government personnel must decline, since the food, drink, and entertainment is a gift from a prohibited source. Several exceptions may permit attendance, however. Under the \$20 rule, if the average cost per guest does not exceed \$20, Government personnel may accept (However, if the cost per guest is \$40, the “I won’t eat more than \$20 worth of food.” defense will not work). Also, Government personnel may accept if the invitation is based

on a bona fide personal relationship with the contractor employee. Finally, if the party qualifies as a widely- attended gathering (involving a large number of persons representing a diversity of views) and the employee’s supervisor determines that it is in the agency’s interest for the employee to attend, the employee may enjoy the food, drink, and entertainment. Government personnel who desire to take a gift to show their appreciation for the hospitality should consult with the contractor employee to determine if he or she may accept such a gift in accordance with the contractor’s rules of ethics.

7. **Private Parties (Contractor-sponsored):** If the contractor is sponsoring an employee’s party or open-house, and you are invited by the contractor (or an employee of the contractor), you may not attend unless one of the exceptions in paragraph #6, above, apply.

**HAVE A WONDERFUL HOLIDAY SEASON. PLEASE REMEMBER THAT THIS GUIDANCE ONLY HIGHLIGHTS COMMON QUESTIONS, AND DOES NOT COVER EVERY SITUATION. IF YOU ARE UNSURE, CONTACT YOUR ETHICS COUNSELOR.**







## Misuse of Equipment and Time:

When we sign onto our computers at work, a banner reminds us that we are logging onto a government computer for official use only. NPD 2540.1G, *Personal Use of Government Office Equipment, Including Information Technology*, sets forth NASA policy governing the use of office equipment. The NPD reminds us that by using government office equipment, employees and contractors consent to monitoring and disclosing the contents of files or information maintained or passed through the equipment. Limited personal use of government equipment, including computers and mobile phones by NASA employees and contractors is permissible, but it should normally occur at times that do not interfere with official business and accomplishing work, should involve minimal additional expense to the government, and must not violate any laws, regulations, or policy.

While it is permissible to keep some personal files on one's government computer, retention of personal files must comply with the NPD and not otherwise violate laws, regulations, or other policy. NPD 2540.1G lists a host of activities prohibited when using and storing information on government equipment. Some examples include: (1) viewing, storing, copying, or transmission of materials describing or depicting sexually explicit conduct or materials; (2) using equipment for commercial purposes, "for profit" activities, or in support of outside employment or business activity such as a personal business, or assisting friends, relatives, or similar activities (this includes storage of outside business documents); and, (3) engaging in private fund-raising activity. Employees should review NPD 2540.1G to become familiar with permissible and impermissible use of government equipment. Ignorance of the policy is not an excuse.

Additionally, 5 C.F.R. § 2635.702 prohibits an employee from using their government position or government

resources for personal gain. For instance, it is not permissible for an employee to have a gift delivered to them through the Langley mail system because it is more convenient than having it delivered at home. Likewise, an employee could not use a government printer to print personal holiday cards or a personal newsletter to send to family and friends.

Employees with questions about the proper use of government equipment and time should contact either an ethics counselor in OCC @ 864-3221 or an Employee Relations Specialist in OHCM at 864-9386 or 864-8783.

## Legal Kudos for Gabriel Barnes

In early November a local Virginia Beach teenager, Gabriel Barnes, purchased what was labeled a lunar rock and a meteorite enclosed in protective glass for \$8.00 each at a local flea market. The young man suspected that the rocks were the real thing and, accompanied by his father Mathew Barnes, Gabriel arranged to turn them into LaRC Security. It turns out the rocks were in fact genuine and had been on loan to the Virginia Air and Space Center from the Johnson Space Center Museum. The rocks were stolen in Virginia Beach in 2006 when they were on loan from the VASC for an educational presentation at a Virginia Beach school. The rocks will be returned to the JSC Museum.

For doing the right thing and returning the valuable rocks to NASA, Gabriel Barnes receives the LaRC Legal Kudos Award.



# *EMPLOYEE MEDICAL DOCUMENTATION AND INFORMATION – ENSURING PROPER COLLECTION, PROTECTION, AND DISSEMINATION*

There is one really important thing for NASA Supervisors and Managers to remember when requesting and sharing employee medical information that is needed for official purposes: Don't do either without contacting the Office of Human Capital Management and the Office of Chief Counsel for advice and assistance.

When it is necessary to request and share employee medical information that relates to an employee's disability or reasonable accommodation request, supervisors and managers will also need to coordinate with the Office of Equal Opportunity Programs.

NASA officials should request employee medical information only when the need for it is job-related and consistent with business necessity. Job-related and consistent with business necessity includes situations involving disability, reasonable accommodation, workers compensation, sick leave, Family Medical Leave Act requests, direct threat situations, and a few others. The information requested should directly tie to the circumstances of each individual employee's situation, and the request for an employee's medical information should be tailored to obtain no more information than necessary. When requesting and sharing medical information it is vital to remember that to most employees, this is the kind of information an employee would not share with his or her supervisor or co-workers unless it is absolutely necessary to satisfy some employment-related requirement.

Once employee medical information is obtained, the information should be treated with respect and confidentiality. Medical information related to an employee is considered Personally Identifiable Information (PII) that is Sensitive But Unclassified (SBU). Such information must be marked "Sensitive But Unclassified," is protected under the Privacy Act, should

be treated as confidential, and retained only in an employee's official medical file at the NASA Clinic.

Employee medical information obtained for official purposes should not be shared freely with anyone. Under the Privacy Act, only NASA employees with a "need to know" such information to carry out official duties may have access to such information. Employees with a need to know most often include an employee's supervisor and advisors in OHCM, OCC, and OEOP. For example, in most situations a supervisor's supervisor doesn't have a "need to know" an employee's medical information to provide input and advice in a given situation.

The guiding principle concerning sharing employee medical information obtained for official purposes is: do not share it freely with anyone, including higher management. Seek advice from OCC, OHCM, and, when required to address disability and reasonable accommodation requests, OEOP.

One other situation that is important to address is when co-workers become aware of a fellow employee's health-related condition. When an employee dealing with a health-related condition shares personal medical information with co-workers, either directly or through a designated family member or central website, it is permissible for co-workers to share such information for purposes of providing support and assistance to the employee with the condition. In this type of situation, it is often helpful to designate an office contact through whom the employee's medical information can be shared (most often when such information is not widely-shared). Though the Privacy Act doesn't apply in this type of situation, it is always important to remember that employees facing a personal health-related situation deserve to have their medical information treated with respect. Even in this situation, your advisors in OHCM and OCC are available to help.

**From all of us at OCC:**

